

Little Dixie Community Action Agency, Inc.

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Lewis Collins, Board Chairperson - Randall Erwin, Executive Director - www.littledixie.org

July 13, 2007

U.S. Department of Agriculture
Regulations and Paperwork Management Branch
1400 Independence Avenue, SW.,
STOP 0742
Washington, DC 20250-0742

RE: Proposed Rule – Streamlining of the Section 523 Mutual and Self-Help Housing Program

Dear Branch Chief:

Little Dixie Community Action Agency, Inc., respectfully submits the following comments on the notice announcing proposed changes to the USDA Rural Development Section 523 program, *Streamlining of the Section 523 Mutual and Self-Help Housing Program*.

Little Dixie CAA, SHARE Department is the Technical and Management Assistance Contractor for Region 2, South Central Area, which includes the states of AR, KS, LA, MO, NE, ND, NM, OK, SD, TX and WY. We work with Rural Development staff and organizations involved with organizing and operating Mutual Self- Help and Self-Help Rehabilitation programs.

Because of the nature of our relationship with both USDA Rural Development and Grantees involved in the implementation and delivery of Section 523 Technical Assistance services, we are obviously interested in programmatic and regulatory proposals that would alter this critical program, and offer the following comments.

COMMENTS AND RECOMMENDATIONS:

3551.1

Applicability:

(1) Recommends that the reference to “Mutual and Self-Help Housing” throughout the proposed rule be changed to “Mutual Self-Help Housing” for clarification purposes.

(2) Would like to see rehab stated in the first paragraph with Mutual Self-Help Program.

Many states have very sparsely populated areas and traveling long distances is difficult for low income families, which makes it a hardship to

work in groups. It also increases the difficulty of finding qualified contractors at reasonable prices as many also charge for the extra travel and time required. Many families are unable to afford a new home but can afford an existing house at a much lower price. Generally the reason these homes are available at a lower price is because they are in need of repair. With the cost savings the self-help housing program brings, families who are willing to contribute their labor can have a safe, decent and sanitary home at a price they can afford.

The 1944-I establishes a Technical Assistance Cost with a negotiated price based on cost savings. The TA Calculation should be left the same as in the 1944-I as it has proven to work well through successful, existing rehab programs.

3551.2 Purpose:

Consolidation of USDA/Rural Development offices and reduced housing personnel at all levels enhances the need for and role of T&MA Contractors to assure overall success and consistency of the Section 523 Mutual Self-Help Housing Program.

T&MA Contractor(s) is not fully recognized in the rewrite and should be used consistently rather than using the following terms; provider, consultants and agents.

Under the proposed rule, Rural Development may grant or contract funds for T&MA services. Only “contract” funds should be listed so as to distinguish and clarify the T&MA contract function from the technical assistance grant function.

3551.2 (c) Proposed revision:

(c) Contract funds to Technical and Management Assistance Contractors for the following services:

- (1) Prepare and disseminate information about the Mutual Self-Help Housing Program;
- (2) Assist prospective grantees with their organizational and grant application efforts;
- (3) Assist grantees with planning and development of their technical assistance grant application efforts;
- (4) Assist grantees in achieving the goals of the Mutual Self-Help Housing Program;
- (5) Assist Rural Development in technical reviews of predevelopment grant and technical assistance grant applications, monitoring and reporting program status and grantee performance, and performing

other financial, management, and administrative responsibilities as defined by the T&MA Contract;

- (6) Prepare training material and conduct comprehensive training to develop self-help capacity and advance the overall Self-Help Housing Program.

3551.2(c)(5) As the Mutual Self-Help Housing Program potentially moves to a competitive NOFA process, it is important because of their technical assistance role, that T&MA Contractors not be involved in scoring, ranking or funding award decisions.

3551.3 Standards of conduct:

3551.3(c) Need more explanation how this ‘identity interest’ is reported if observed by a T&MA staff person.

3551.3(d)(1) Recommend wording change to read “state licensed appraiser” rather than “independent appraiser”.

- 3551.3(d)(3) This instruction is unnecessary and should be deleted as grantees should not be involved in buying in bulk with grantee funds and then passing costs to participant/borrowers. Creates opportunity for abuse of funds

3551.6 Environmental requirements:

Individual sites used for the 523 program must meet the appropriate level of environmental clearance based upon cumulative impacts of a particular project. It is not within USDA/Rural Developments authority to require that all projects located in a new subdivision in which five or more lots will be used be subject to the same level of environmental review.

3551.7 Construction requirements:

- 3551.7(b) Labor task list should be available for comment before instructions are final. Handbook should also be available for comment before it's published.

Without knowing the attributes that encompass family labor, it is impracticable to comment on the change in the minimum family labor contribution from 65% to 50%. We understand the required 100% task list will be provided in the agency handbook available in any USDA/Rural Development offices. However, it would be good to incorporate the task list into the proposed rule so everyone involved with the Section 523 Mutual Self-Help Housing Program be given a complete picture of how the change would impact the program. It would be good to reference sections of the 3551 regulations to the Field Handbook.

- 3551.7(b)(1) Grantees believe "clean up of waste, trash debris" and site clean up should be included as a credit in the 50% labor task list.

Grantee believes labor task list should take differences in building styles into consideration when defining tasks to be performed.

- 3551.7(b)(3) Suggest prior pre-approved helpers be permitted to contribute towards the family labor requirements. Under the proposed rule, the work relatives and other helpers do would not be counted toward the family labor requirements. Unfortunately, this would be a disadvantage to the families that are comprised with single heads of households. However, large organized volunteer groups should be excluded from being pre-approved workers.

3551.9 Exception authority:

- 3551.9 Exception authority should be left at state level.

3551.10 Definitions:

3551.10 Would like to see definitions expanded to include operating grantee, pre-development grantee, prospective grantee, new grantee, equity, sweat equity and volunteer.

Close Out. Would like to see close out instructions covering the return of power tools, equipment, furniture, etc. to the government upon termination of a grant program, as well as return of unused funds.

Elaborate on custodial account definition.

Equivalent units. Equivalent units “are not a measurement of actual accomplishments”. We believe that they are the only “point in time” measurement that is useful. This concept has been effectively used ever since it was developed in the 1970s when the program was experiencing a lot of growth.

Equivalent value of a modest home. Recommend this definition be clarified because it is linked to the maximum TA amounts. A suggested definition would be “the typical value of a comparable house in the area, as determined by either a recent contractor built home financed by Rural Development, or an independent appraisal.”

Grant Agreement should be rewritten and improved to reflect today’s good business methods, controls and procedures which protect both RD and the Grantee.

Leverage Assistance. Need clarification if leverage funds are included in TA Cost.

Members’ Agreement has not and should not be an RD form; this is a contract between the family and the grantee.

Production based. Recommend the definition should be changed to read “for a proposed number of equivalent units during the grant cycle.” Also, would like the definition be further explained.

The definition for reasonable costs is not reasonable.

Would like to see Self Help Rehab allowed within the regulations along with a definition and operating instructions.

Technical Assistance has been expanded to include counseling. We request a more specific definition of ‘counseling’ be provided.

Limits should be placed on a Sponsor regarding financial agreements between a grantee and a sponsor.

3551.51 Eligibility requirements:

3551.51 (a)(3)(iii) Questioning expanding eligibility to 501(c)(4) organizations in a time of funding shortage. 501(c)(4) is allowed to lobby but would have to sign 'Disclosure of Lobbying Activities' and 'Certification Regarding Lobbying' forms or would they be exempt. Foundations are barred from granting to 501(c)(4)'s which limits their access to leverage funds.

Unlike 501(c) (3) applicants, 501 (c)(4) applicants cannot accept charitable donations and can participate extensive lobbying activities and even engage in partisan politics.

3551.51 (a)(3)(v) Leave 'Has a Board of Directors with at least five members'. Omit the rest of the sentence. RD should not determine the makeup of an entities board.

3551.51(b)(2) Small entities may have no Commercial Rating and the language 'acceptable rating' is too vague.

3551.51(c)(1) Recommend wording change to 'usually no fewer than 5 homes'

3551.51(c)(2) Recommend to have the words 'during total grant period' added to clarify this is for the total grant period and not 'per building group'. Also, recommend there be a provision which would allow grantees some flexibility and provide an exception to the rule in a situation where for example, a grantee is located in a high cost area.

3551.51(c)(3) The target equity in homes should be based on the local market conditions with 10% being a goal rather than a requirement. Participating families may not have at least 10% equity in some states. In some markets housing inventory may be unavailable and/or unaffordable and while there may be less than 10% equity this is the only option for affordability. This is also true on land trusts and tribal land. Equity may be as much a measure of the market place as it is family performance. The proposed regulation does not allow for an RD audit of the circumstances that led to less than 10% equity, negatively impacting grantees in soft markets or with special circumstances. Recommend the requirement of 10% be taken out or replaced with "cost of self help vs. contractor built cost".

3551.51(c)(1) Recommend strongly that 'no fewer than 5 homes' should be replaced with 'usually no fewer than 5 homes'.

3551.51(c)(5) Needs clarification on what is to be covered.

3551.51(g) Needs clarification of ‘production based method’.

3551.51(g)(4) This requirement is too stringent and should be removed.

3551.52 Authorized technical assistance grant uses:

3551.52(b)(6) Request that ‘fees’ be changed to ‘costs’ for the sake of consistency.

3551.52(b)(10) Strongly oppose due to costs would start automatically transferring to the Grantee.

3551.54 Technical assistance (TA) grant amount:

3551.54(b)(1) Request the second sentence be omitted or add to the second sentence ‘unless the State Director waives the requirement for areas difficult to serve’.

3551.55 Application submission and processing:

3551.55 (a) Understanding the underlying rationale which has led to the proposal of a competitive NOFA process we agree that the rapid growth of interest in this program has necessitated a change in how the program is being delivered. However, we would like USDA/Rural Development to consider some of the drawbacks of an annual NOFA process. There is a lot of uncertainty in terms of timing if the NOFA process were adopted. Using this year’s federal budget process as an example, there would be constraints placed on the program by the budget process and the 1940-L, which would automatically disqualify many grantees. Funding for the grantees would not actually be available until July which does not fit groups located in the northern tier of the country where it is vital to start building on July 1st due to weather constraints.

A number of grantees partner with private financial institutions to acquire land to develop housing. The uncertainty of the NOFA process will greatly inhibit the ability of these organizations to partner with others to acquire sites.

Another issue of concern is the proposed rule does not set out the scoring criteria for the NOFA. The proposed rule refers to possible scoring factors that may be considered such as geography, costs, leverage, etc. but it does not outline the actual process and the standards that each applicant will be measured against. We recommend that USDA/Rural Development to release the scoring criteria for the competitive NOFA process as part of this proposed rule. This will allow Grantees to comment on the factors that would be vital to the process which they have a lot at stake in.

If the annual competitive NOFA process is adapted by the USDA/Rural Development, we suggest consideration of a bifurcated system or funding process between the different types of grantees as was made in the Unnumbered Letter Dated January 5, 2007: existing performing grantees, new grant requests and pre-development grants, with funds set aside for existing performing grantees and existing performing grantees would not be required to compete in a NOFA. Existing Grantees who have developed a long track record of success with the 523 program who are not expanding their territory or production and are utilizing the production based method, should continue under the program as it is currently structured by the USDA's Administrative Notices. We also recommend making the grant period longer under this situation such as a 36 month grant. The amount of funding available should be divided according to the following criteria: existing performing grantees; pre-development and new grantees.

Reducing TA via a competitive process does not address disparity between high cost and low cost markets, does not address the differing 502 loan processing services offered grantees by RD offices across the country, and will eliminate programs that provide homeownership at a reasonable cost to the government at a price tag below that which those we serve could buy a comparable home.

- 3551.55(a)(3) Needs clarification as to who will complete the evaluation and what the scoring criteria will be.
- 3551.55(b) There is no allowance for grantees that are not performing on the numbers, but provide homeownership at a cost lower than their market place, such as mission driven entities serving difficult to serve, underserved, and extremely poor populations.
- 3551.55 (b)(3)(v) Change '90 days' to 'no more than 12 months' old.
- 3551.55(b)(5) Grantees would be unable to commit lot options under a NOFA process. Committing to options is risky for groups who commit and don't receive grant approval under the NOFA. Grantees would not want to obligate for options, surveys, and appraisals and not have the grant application approved.

Grantees would like to see the requirement changed to 'identify adequate and available sites for the first group' which would remove a serious obstacle to meeting an application rule.
- 3551.55(b)(9) Commercial Credit report should not be waived for any type of organization, including public body(s) and Tribe(s).

3551.55(b)(11) Would like to see the word ‘provisional’ added to ‘indirect rate’.

3551.55(c)(1) Would like to have clarification of “state designated targeted county/parish”. Recommend minimal points are awarded for this score if the scoring process goes into affect.

3551.55(c)(2) Recommend using a percentage basis instead of dollars to be more fair among grantees.

3551.55(c)(4) Would like to see performance evaluation be extended to ‘total past performance’ rather than ‘last grant’.

Strongly recommend that operating grantees who have shown satisfactory performance and successful completion of past Section 523 grants be given extra points in the scoring and ranking selection. Recommend this be added as additional scoring criteria.

Grant closeouts are likely to take place after NOFA submission and award (to maintain pipeline activity). As a result no rating will be available to the scoring committee negating a significant component of the proposed rule.

3551.55 (c)(6) Leveraging should be a bonus but not a threshold. In the past they wanted the 523 program to be a stand alone program, therefore leveraging goes in opposition to this. We strongly believe this requirement is excessive and will be almost, if not totally, impossible for small operators to meet. Small programs would be likely to meet all grant program requirements other than this requirement. Very few sources of leverage funds are available and existing grantees don’t have staff or capacity to seek, develop and secure the funds. We strongly recommend this requirement be removed from the point system. A number of performing, long existing entities solely offering a MSH program, will be negatively impacted by the multi funded requirement.

3551.55(d)(5) Recommend the word “develop” be changed to “adopt” as there are already many good agreements in use.

- 3551.55(e) Recommend changing the grant period from ‘24 month’ to ‘up to 36 month’ grant period. This would allow grantees utilizing SHOP site funds to plan and manage production and coordinate loan closing, land prep and construction more exactly and efficiently. Additional benefits would include freeing up staff to spend more time in managing participant recruitment, loan packaging and other duties rather than time devoted to a new grant application process.

Challenge of reconciling NOFA program with the production process would be immense. Grantees would have to turn to overlapping, multiple grants to have consistent funding in light of funding cycles per year and shortened building cycles due to weather, etc.

3551.101 Provisions of technical assistance:

- 3551.101(b) If grantees decide to use on-line counseling courses, they should require State Director approval and EU credit should be given for certifications completed.

3551.101(c)(5) Recommend the wording “when practical” be inserted.

3551.101(c)(7) Recommend “all major contractors” be deleted or replaced with “all major contractors invited” to pre-construction meetings.

3551.102 Request for payment:

- 3551.102(c) Recommend replacing ‘monthly’ with ‘10th of month following each calendar quarter’. Strongly recommend deleting last sentence.

3551.102(d) Recommend a change in wording from ‘provide’ to ‘make available’.

3551.103 Audit Requirements:

3551.103(a) Recommend changing ‘90 days’ to ‘180 days’.

3551.103(b) Recommend Section 502 borrower accounts, or at least a random sample of them, should be audited regardless of a request from USDA/Rural Development. This would aid in preventing abuse and misuse of funds.

3551.103(c)(3) Recommend every agency have an audit or financial review. (May need to define types of audits and allow agencies below a threshold to have a lesser audit than those required to meet A-133 standards because of the expense.)

3551.103(d) This is not an auditor’s responsibility to report to USDA/Rural Development—they report to the board of the Grantee.

3551.151 Grant agreement amendment:

3551.151 Conflicts between USDA/Rural Development Instructions and OMB Circulars, needs to be completely redone.

3551.151(b)(2) Recommend amendments to reduce number of houses be allowed if a comparable amount of grant funds are to be returned to RD and the TA cost will remain the same.

3551.152 Grantee monitoring:

3551.152(b)(1) It is not feasible or reasonable for USDA/Rural Development staff to audit family labor and visit sites, other than for acceptable building practices. Remove the following from the last sentence ‘and the mutual labor contributed by the participating families’.

3551.152(b)(2) Recommend deleting the word ‘contractor’.

3551.204 Unauthorized predevelopment grant uses:

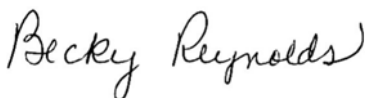
3551.204(a) Strongly recommend this requirement should be removed or rewritten. As it now reads, USDA/Rural Development staff would have to package loans for the first group of families.

Thank you for your consideration in the above comments to this rule.

Sincerely,



Randall Erwin
Executive Director



Rebecca Reynolds
Associate Director